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**BOARD OF SUPERVISORS
ACTION ITEM**

SUBJECT: Transportation and Land Use Committee Report:

ZOAM 2007-0004 Farm Markets in Various Zoning Districts and Reduce Minimum Acreage Requirements for Agriculture, Horticulture, and Animal Husbandry Uses

ELECTION DISTRICTS: County-wide

CRITICAL ACTION DATE: At the Pleasure of the Board

STAFF CONTACTS : Michelle Lohr, Zoning Administration

RECOMMENDATIONS:

Transportation and Land Use Committee (TLUC): At its February 22, 2010 meeting, the TLUC voted 5-0 to forward ZOAM 2007-0004 to the Board of Supervisors with a recommendation of approval, to amend the Revised 1993 Loudoun County Zoning Ordinance regarding Farm Markets and the minimum acreage requirements for Agriculture, Horticulture, and Animal Husbandry uses, including the revisions made by the TLUC, as contained in Attachment 2.

Planning Commission: The Planning Commission voted unanimously on December 1, 2009 to forward ZOAM 2007-0004 to the Board of Supervisors with a recommendation for approval of the draft text included in Attachment 1.

Staff: Staff concurs with the TLUC recommendation.

BACKGROUND

The Planning Commission and Board of Supervisors held previous public hearings (11/19/07 and 1/8/08, respectively) regarding proposed amendments to the regulations regarding Farm markets. Following discussions by the Planning Commission, the proposed amendments were revised to include other zoning districts and amendments, thus prompting the need for a new Resolution of Intent to Amend the Zoning Ordinance that was adopted February 17, 2009. The amendments as proposed would create a new use type, "Farm markets (off-site production)" permitted by special exception in the AR-1, AR-2, JLMA-1, JLMA-2, JLMA-3, JLMA-20, TR-10, TR-3, TR-2, TR-1 districts, ensure consistency between the definition of Farm market and the Additional Regulations of Section 5-603, establish a maximum structure size for both types of Farm markets and establish parking and landscaping requirements for Farm markets (off-site production). Further, amendments are proposed to clarify the types of uses that may be established with a sketch plan.

During review of the proposed Farm market amendments in January 2009, the Transportation and Land Use Committee discussed a letter addressed to the Board of Supervisors from the Rural Economic Development Council (REDC) recommending that the minimum acreage requirement for Agriculture, Horticulture and Animal Husbandry be eliminated.

The Transportation and Land Use Committee recommended to the Board of Supervisors that the Resolution of Intent to Amend include an amendment regarding the minimum acreage for agriculture, horticulture and animal husbandry in addition to the Farm market amendments.

On February 17, 2009, the Board of Supervisors adopted a Resolution of Intent to Amend the Revised 1993 Loudoun County Zoning Ordinance (Zoning Ordinance) to add Farm markets without agricultural production on-site, as a special exception use within the AR-1, AR-2, JLMA-1, JLMA-2, JLMA-3, JLMA-20, TR-10, TR-3, TR-2, TR-1 zoning districts and to reduce the minimum acreage requirements for agriculture, horticulture, and animal husbandry uses. The amendments propose to: (1) amend Tables 2-102, 2-202, 2-1003, 2-1103, 2-1203, 2-1303, 2-1402, 2-1502, 2-1602 and 2-1702 to add a new use type, Farm markets (off-site production), as a special exception use within the Use Category of "Retail Sales and Service" for the AR-1, AR-2, JLMA-1, JLMA-2, JLMA-3, JLMA-20, TR-10, TR-3, TR-2, TR-1 districts, (2) amend Article 8, *Definitions*, including, without limitation, amending the existing definition of "Animal Husbandry" and establishing new definitions for "Farm Market (off-site production)" and "Livestock" and "Pet"; (3) amend Additional Regulations Section 5-603, *Farm markets*, to ensure consistency in regulations and terminology and establish new maximum building size, parking, landscaping and buffering standards; (4) amend Additional Regulations Section 5-626, *Agriculture, Horticulture and Animal Husbandry*, to reduce and/or eliminate minimum acreage requirements under certain circumstances; (5) amend Section 6-700, *Site Plan Review*, to clarify when site plans or rural sketch plans are required, and (6) amend such other sections of the Zoning Ordinance as necessary to implement and maintain consistency with the foregoing amendments.

As a reminder for the Board of Supervisors and the public, with the adoption of amendments to the Zoning Ordinance on December 3, 2007, the minimum acreage requirement in Section 5-626 for Agriculture, Horticulture and Animal Husbandry uses had been increased from 3 to 5 acres. The Board of Supervisors has subsequently reviewed three requests for modifications through the minor special exception process (SPEX 2008-0029 Berkeszi, SPEX 2009-0043 Francis Property, SPMI 2009-0004 Oberlander) seeking reduction of the 5-acre minimum. All three applications were approved with conditions limiting the number of animals on the property based on the size and characteristics of the specific parcel.

The Planning Commission conducted a public hearing on October 15, 2009. Four people spoke in favor of the amendment and one spoke in opposition. The Commission held work sessions on November 12, 2009 and December 1, 2009 to discuss the proposed amendments.

At the December 1, 2009 work session, the Planning Commission voted 9-0 to send ZOAM 2007-0004 to the Board of Supervisors with a recommendation of approval, subject to the changes to the proposed text made at the December 1st meeting. The revised language is included in Attachment 1. (Staff has noted some grammatical, spelling and punctuation corrections which are indicated by double underline.)

On January 11, 2010, the Board of Supervisors held a public hearing at which one person spoke against the amendments associated with the reduction of the minimum acreage requirement for agriculture, horticulture and animal husbandry. During discussion at the conclusion of the public hearing, Board members expressed concern regarding (1) the landscaping requirements proposed for the proposed Farm market (off-site production) use, (2) the lack of guidance in the amendments to address the maximum number of animals that would be permitted based on acreage, (3) the specific districts that are proposed to include the Farm Market (off-site production) use, (4) the use of

percentage of products offered for sale as a means of measurement rather than the current measurement of gross sales receipts and (5) whether the Board could consider reducing the required percentage of products required to be from Loudoun County from 25% to a lesser percentage such as 15%. A question was also raised regarding the history of the proposed amendments to the Farm Market use.

At the conclusion of the Board's public hearing, the Board voted 9-0 to forward ZOAM 2007-0004 to the Transportation and Land Use Committee for further discussion on the proposed amendments and specifically the issues addressed below.

At the February 22, 2010 TLUC Meeting, the TLUC voted 5-0 to send ZOAM 2007-0004 to the Board with a recommendation of approval, including the revisions recommended by the TLUC (Attachment 2). The revisions include: (1) amend the draft text so that the Farm Market (off-site production) use is only permitted in the JLMA 1, 2, and 3 districts and (2) permit animal husbandry on properties of two (2) to five (5) acres with an approved Conservation Farm Plan with Best Management Practices.

While deliberating the matter at the February 22, 2010 meeting, the Committee initially discussed revising the ordinance to permit animal husbandry uses with no minimum lot size, with a Conservation Farm Plan including Best Management Practices on a parcel less than 3 acres. The Committee ultimately agreed, however, there should be a minimum lot size to accommodate a house, well, and drainfield and discussed whether the appropriate minimum lot size should be 5 acres or 3 acres with 2 usable acres.

After consideration of language proposed during the Planning Commission's review of Section 5-626(A)(ii) (See page A28 from the February 22, 2010 Committee item) defining usable acreage as "land that is not located within 100 feet of a well, does not contain steep slopes, floodplain, a drainfield or reserve drainfield area and is at least 30 feet from a stream...", the Committee agreed to recommend animal husbandry uses be permitted on less than 5 acres with a minimum lot size of 2 acres, and to require a Conservation Farm Plan with Best Management Practices that takes into consideration the type and construction of any wells, septic fields, environmental features, etc. as proposed in Section 5-626(B).

Supervisor York moved approval of ZOAM 2007-0004, Farm Markets in Various Zoning Districts and Minimum Acreage Requirements for Agriculture, Horticulture, and Animal Husbandry Uses as amended February 22, 2010 at the Transportation and Land Use Committee. Supervisor Kurtz seconded. The motion passed 5-0.

ISSUE:

What is the effect of the reduction of the minimum acreage requirement on existing approved special exceptions that were granted to modify the current 5 acre minimum requirement of Section 5-626.

If the new regulations are less restrictive than an approved special exception, the property owner can certainly pursue the new regulations. If an approved special exception is less restrictive, the property owner can pursue the special exception under vested rights statutes.

FISCAL IMPACT:

The cost of proceeding with this item is included in current staff workloads to aid property owners in the development of the Conservation Farm Plans. These plans are proposed to be developed through and with the Loudoun Soil and Water Conservation District and the Virginia Cooperative Extension Services.

ALTERNATIVES:

- 1) Approve ZOAM 2007-0004; or
- 2) Deny ZOAM 2007-0004; or
- 3) Forward ZOAM 2007-0004 back to the Transportation and Land Use Committee for further discussion.

SUGGESTED MOTIONS:

1. I move that the Board of Supervisors approve ZOAM 2007-0004 regarding permitting Farm Markets (off-site production) in various zoning districts and to reduce the minimum acreage required to establish Agriculture, Horticulture and Animal Husbandry uses, as contained in Attachment 2, Pages A7–A12. I further move that the Board of Supervisors find that this Amendment is required by the public necessity, convenience, general welfare and good zoning practice.

OR

2. I move an alternate motion.

ATTACHMENTS:

1. Planning Commission Recommended Text, Revised through December 1, 2010 A1-A6
With grammatical, spelling & punctuation revisions by Staff.
2. Transportation and Land Use Committee Recommended Text regarding Farm A7-A12
Markets and Agriculture, Horticulture, and Animal Husbandry Uses, dated
February 22, 2010.
3. February 22, 2010 Transportation and Land Use Committee Item #3.. A13-A31